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No. 91-1260

In The

Supreme Court of the United States

October Term, 1991

LAC D'AMIANTE DU QUEBEC, LTEE,

Petitioner,

v.

STANLEY STANEK and ROBERT LINDHOLM,

Respondents.

Petition For Writ Of Certiorari To The Court Of Appeals Of Minnesota

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Should this Court review a decision of the Minnesota Court of Appeals, which decision was itself denied review by the Minnesota Supreme Court, denying a motion for dismissal by the petitioner asbestos mining company on purported personal jurisdiction grounds, where that mining company had directly supplied asbestos fiber to a Minnesota plant operated by a co-defendant company to whose asbestos products the respondents were exposed, and where the movant asbestos mining company had a number of other significant contacts with the forum state of Minnesota?

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF AUTHORITIES iii

STATEMENT 1

REASONS FOR DENYING THE PETITION 4

I. The Court of Appeals Knowingly Decided These Consolidated Cases With Full Awareness Of The Supreme Court's Decision In *Asahi Metal* And Specifically Harmonized Its Holding With That Of The Supreme Court Plurality In That Case 5

II. The Minnesota Court Of Appeals Did Not Ignore The Distinction Between "Specific" And "General" Personal Jurisdiction 7

CONCLUSION 9

TABLE OF AUTHORITIES

Page

CASES:

Asahi Metal Indus. Co. v. Superior Court of Calif, 480 U.S. 107 (1987) ..... *passim*

Stanek v. A.P.I., Inc., 474 N.W. 2d 829 (Minn. App. 1991), review denied, (Minn. October 31, 1991) 2, 4, 6, 8, 9

Rostad v. On-Deck, Inc., 372 N.W.2d 717 (Minn. 1985), cert. denied 474 U.S. 1006 (1985) 4

STATUTES:

M.S.A. §543.19 3

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BRIEF IN OPPOSITION

STATEMENT

Petitioner Lac d'Amiante du Quebec (LAQ) is an asbestos mining company incorporated in the State of Delaware which shipped its asbestos fiber products directly to a Ruberoid Company plant in Minneapolis, Minnesota, between 1959 and 1963. These are years relevant to the causes of action in the instant consolidated Minnesota state court asbestos personal injury cases because these years are among those in the period during which the respondents were exposed to Ruberoid brand asbestos-containing products.

As the Minnesota Court of Appeals explained below:

> LAQ did sell raw asbestos fiber, "F.O.B. Black Lake, Quebec," to a Ruberoid plant in Minneapolis between 1959 and 1963. LAQ dealt with a Minnesota sales representative in the mid-1960s. LAQ corresponded with 3M Company five times between May 1962 and November 1964 regarding the potential sale of raw asbestos fiber, and an LAQ salesman visited 3M in St. Paul in 1963. LAQ mailed price lists to 3M in 1970, 1974 and 1976.

Stanek v. A.P.I., Inc., et. al., 474 N.W.2d 829, 831 (Minn. App. 1991), review denied, October 31, 1991.

Indeed, the successor-in-liability to the Ruberoid Company, GAF Corporation, is a defendant joined by the respondents in the instant cases on the basis of its successorship to the asbestos-related liability of Ruberoid. (Petition Appendix, Exhibit F. App. 46).

LAQ also had a number of other indirect marketing contacts with Minnesota.

As the Minnesota Court of Appeals also observed in this case:

> LAQ has supplied raw asbestos fiber to a number of manufacturers, including Armstrong World Industries; Fiberboard Corporation; H.K. Porter Company, Inc.; Owens-Corning Fiberglas Corporation; Raybestos Manhattan (a/k/a Raymark); United States Gypsum Company; and United States Mineral Products Company . . . (d)eposition testimony indicates that LAQ was a major supplier of Canadian asbestos to the United States market.

Stanek v. A.P.I., Inc., et. al., supra, 474 N.W.2d at 831.

Therefore, LAQ was a major asbestos fiber mining company which distributed its product to various national asbestos product manufacturers through the stream of commerce to such a degree that it was reasonable to infer that LAQ intended through this marketing scheme to serve Minnesota markets, either through the marketing of its asbestos as a component part of a finished product or of that asbestos in its raw form.

LAQ thus had both substantial *direct and indirect contacts* with Minnesota such that a substantial connection existed between it and the forum whereby the exercise of personal jurisdiction over LAQ by the Minnesota court was consistent with the principles of fair play and substantial justice required by the Due Process Clause.

The respondents are Minnesota residents who used and were exposed to the asbestos and asbestos-containing products mined, manufactured, and distributed by petitioner LAQ while they were working in Minnesota. As a result of this exposure, these plaintiffs sustained personal injuries in the form of asbestos-caused pulmonary disease, cancer, and resultant disability.

The trial court denied LAQ's motion to dismiss on personal jurisdiction grounds, finding that LAQ had a great deal "more than a simple general knowledge that its product might show up in Minnesota some day." See Trial Court Memorandum at 3 (Petition Appendix, Exhibit C, App. 23-24).

LAQ subsequently pursued its right to an interlocutory appeal. The Court of Appeals of Minnesota in turn affirmed the trial court's holding that LAQ was amenable to Minnesota jurisdiction by virtue of M.S.A. §543.19, and

that sufficient minimum contacts were established at this pre-trial stage to satisfy Due Process considerations under the doctrine set forth in the plurality decision of the United States Supreme Court in *Asahi Metal Indus. Co. v. Superior Court of Calif.*, 480 U.S. 107 (1987), and in the Minnesota Supreme Court's unanimous decision in *Rostad v. On-Deck, Inc.*, 372 N.W.2d 717, 719-722 (Minn. 1985), *cert. denied* 474 U.S. 1006 (1985). See *Stanek v. A.P.I., Inc., et. al.*, 474 N.W.2d 829, 833-834 (Minn. App. 1991), review denied by the Minnesota Supreme Court by order of October 31, 1991.

In its holding, the Minnesota Court of Appeals concluded that *LAQ had both direct contacts and indirect contacts* through the stream of commerce with Minnesota which together caused petitioner LAQ to have sufficient minimum contacts to satisfy Due Process principles. *Stanek, supra,* 474 N.W.2d at 832-835.

REASONS FOR DENYING THE PETITION

Petitioner LAQ characterizes the instant consolidated cases as providing the Supreme Court with an opportunity to resolve that which constitutes "purposeful availment" in a stream-of-commerce product liability setting. However, as is explained above, LAQ had important and substantial *direct* contacts with the State of Minnesota. These *direct* contacts were certainly referenced by the Court of Appeals of Minnesota and were necessarily comprehended by that court as a foundational basis for its decision. *Stanek v. A.P.I., Inc., et. al., supra,* 474 N.W.2d at 831-835.

As a result, the facts in the instant consolidated cases do not provide a clean and clear opportunity for this court to revisit and further develop the doctrine set forth in the plurality decision of the court in *Asahi Metal Indus. Co. v. Superior Court of Calif.*, 480 U.S. 102 (1987), specifically the "purposeful availment" analysis of the plurality in that case.

In consequence, and contrary to the manner in which petitioner LAQ incorrectly characterizes the instant consolidated cases, LAQ did indeed have *specific direct contacts* with Minnesota. Because of this fact, the instant case is nothing more than a garden variety personal jurisdiction case in which *direct* contacts of a particular defendant are present showing obvious and purposefully directed actions toward the forum State of Minnesota. Certainly this case does not present the novel opportunity for this court to further develop the "purposeful availment" analysis of the plurality in *Asahi Metal* that petitioner LAQ claims that it does.

I. THE COURT OF APPEALS KNOWINGLY DECIDED THESE CONSOLIDATED CASES WITH FULL AWARENESS OF THE SUPREME COURT'S DECISION IN *ASAHI METAL* AND SPECIFICALLY HARMONIZED ITS HOLDING WITH THAT OF THE SUPREME COURT PLURALITY IN THAT CASE.

LAQ's central argument in support of its petition is that this case presents the Supreme Court with an opportunity to resolve "the turmoil which has ensued from *Asahi.*" Petition at 10. That turmoil, according to LAQ, revolves around whether "mere awareness" on the part

of a foreign defendant that its products would reach the forum state constitutes sufficient minimum contacts to form the basis for an exercise of personal jurisdiction. *Id.* at 12-22. The plurality in *Asahi* held that "something more" than mere awareness is required to exercise personal jurisdiction over a foreign defendant. *Asahi Metal, supra,* 480 U.S. at 112.

Contrary to these assertions by LAQ, however, the Minnesota Court of Appeals did *not* "intentionally reject" the standard enunciated by the *Asahi* plurality in favor of a mere awareness test. To the contrary, the Minnesota court reasoned that LAQ's direct contacts with the state constituted the "something more" required by the *Asahi* plurality. *Stanek v. A.P.I., Inc., et. al., supra,* 474 N.W.2d at 833-834. Although the Minnesota Court of Appeals did state that the *Asahi* plurality's standard was not binding on it, the court went on to say that, "(h)aving said this, it is evident that there is 'quite a bit more' contact with the forum state as presented here." *Id.* at 834. The court then recited LAQ's purposeful and direct contacts with Minnesota, concluding that the quantity and quality of LAQ's contacts with Minnesota were sufficient for the exercise of personal jurisdiction over LAQ. *See Id.*

In actuality, the Minnesota Court of Appeals even utilized the standard enunciated by the *Asahi* plurality, and found that this standard was met with respect to LAQ. *Id.* at 833-834. This case, therefore, does not present the Supreme Court with an opportunity to clarify whether "mere placement of raw materials into the stream of commerce . . . constitutes purposeful availment" within the meaning of *Asahi.* Petition at i. Neither does the instant case present to this court the question of

whether "the Minnesota courts (may) intentionally reject the Court's decision in *Asahi*." *Id.*

Because the analytical framework utilized by the Minnesota Court of Appeals was entirely consistent with that employed by the *Asahi* plurality, there is no reason to grant review on the grounds urged by LAQ. To the extent this Court is concerned about any "turmoil" such as that which LAQ claims has resulted from the splintered decision in *Asahi*, it is submitted that this Court should grant review of a case in which a lower court has expressly embraced the standard articulated by Justice Brennan in his *Asahi* concurrence. The instant case is not, however, such a case.

II. THE MINNESOTA COURT OF APPEALS DID NOT IGNORE THE DISTINCTION BETWEEN "SPECIFIC" AND "GENERAL" PERSONAL JURISDICTION.

Equally without merit is the additional argument advanced by petitioner LAQ to the effect that review by this court is warranted because the Minnesota Court of Appeals allegedly "ignored the distinctions between specific and general jurisdiction." Petition at 22. This claim by LAQ, reduced to its essentials, is that the Minnesota Court of Appeals erred in looking to prior contacts between LAQ and the State of Minnesota which supposedly had no relation to the causes of action implicated in the instant consolidated cases. Such contacts, argues LAQ, lack the requisite "nexus" with the present action to form the basis for an exercise of specific personal jurisdiction.

In making these observations, however, LAQ seriously mischaracterizes the Minnesota Court of Appeals holding as well as the record of this case. As stated above, the respondents in the instant consolidated cases have all named GAF Corporation as a defendant "as successor-in-interest to the Ruberoid Company". See Petition Exhibit F, App. 46 and Exhibit G. App. 64.

Indeed, the respondents have specifically assigned liability to the Ruberoid Company and to its successor GAF Corporation for their asbestos-related injuries. Petitioner LAQ does not dispute the fact that it shipped raw asbestos fiber directly to the Ruberoid plant in Minneapolis, Minnesota, between 1959 and 1963, years during which the respondents were exposed to Ruberoid-brand asbestos products. See also *Stanek v. A.P.I., Inc., supra,* 474 N.W.2d at 831.

Certainly this activity by petitioner LAQ constitutes a substantial connection between LAQ and the forum State of Minnesota which action, by its very nature, was purposefully directed to the forum state. *Asahi Metal Indus. Co. v. Superior Court, supra,* U.S. at 108-113, 116.

As the Minnesota Court of Appeals explained in the instant case:

> According to four justices in *Asahi Metal Indus. Co. v. Superior Court of Calif.*, 480 U.S. 102, 112, 107 S.Ct. 1026, 1032, 94 L.Ed.2d 92 (1987), "something more" than the defendant's act of placing the product in the stream of commerce is required to satisfy due process . . .
>
> Having said this, it is evident that there is "quite a bit more" contact with the forum state as

> presented here. LAQ made direct sales in Minnesota from 1959 to 1963. It has solicited business in Minnesota. More specifically, an LAQ sales representative visited Minnesota in the mid-1960's; it mailed soliciting correspondence to 3M Company's Minnesota plant in 1963; and it mailed price lists to 3M Company in 1970, 1974 and 1976.
>
> 474 N.W.2d at 833-834.

From consideration of this language from the Minnesota Court of Appeal's decision in the instant case, it is clear that this state court was fully aware of the "something more" requirement articulated by the plurality in *Asahi Metal*. In this context, the suggestion by petitioner LAQ that this is a pure stream-of-commerce case is clearly incorrect.

Similarly, the contention by LAQ that its contacts with the State of Minnesota were unrelated to the causes of action in the instant case is equally erroneous in light of the respondents' exposures to asbestos-containing products manufactured by the Ruberoid Company, for whose plant LAQ supplied asbestos fiber from 1959 through 1963. Clearly, the prior contacts at issue here are *not* unrelated to the present action.

III. CONCLUSION

In summary, the legal questions presented by LAQ in the instant case are hardly sufficiently important to warrant review. Contrary to LAQ's claim, the Minnesota Court of Appeal's decision is analytically consistent with

Asahi. It is clear that LAQ's prior contacts with Minnesota do indeed constitute the "something more" envisioned by the *Asahi* court.

In any event, the facts in the instant case do not present the kind of pure stream-of-commerce product liability setting which petitioner LAQ claims does exist. It is submitted that if this court wishes to further develop the doctrine set forth by the plurality in *Asahi Metal*, the instant case, given the *direct* contacts by petitioner LAQ with the forum State of Minnesota, does not provide the appropriate vehicle for expanding upon the plurality decision in *Asahi Metal*.

Respectfully submitted,

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